IN THE HIGH COURT OF BOMBAY AT GOA.

CRIMINAL APPEAL NO. 8 OF 2002.

The Employees State Insurance
Corporation through its
Insurance Inspector, o/at
Panchadeep Bhavan, Patto,
Panaji, Goa. ... Appellant.

Versus

1. M/s. Shogun Industries
   Limited, a Company
   incorporated under the
   Companies Act, 1956,
   Plot Nos. 103 & 104,
   Sancoale Industrial
   Estate, Zuarinagar, Goa.
2. Shri R. Kalyanaraman,
   Director, M/s. Shogun
   Industries Limited,
   Plot Nos. 103 & 104,
   Sancoale Industrial
   Estate, Zuarinagar, Goa. ... Respondents.

Mr. D. Pangam and Miss A. Salkar, Advocates for the Appellant.

Mr. A. Panicker and Mr. Arun Bras de Sa, Advocates for the Respondents.

Coram : P.V. HARDAS, J.

Date : 19th April 2004.

ORAL JUDGMENT.

The appellant/complainant being aggrieved by the Judgment of the learned Additional Sessions Judge, South Goa, Margao, dated 6th August 2001, in Criminal Appeal No. 3 of 2001, acquitting the respondents for the offence punishable under Section 85(1)(a)(b) of the Employees State Insurance Act, 1948, has filed this appeal.

2. The facts, as are necessary for the decision of this appeal, are stated hereunder:-

A private complaint case came to be filed on 17th August 1998 in the Court of the Judicial Magistrate, First Class, Margao, complaining of the commission of the offence by the accused under Section 85(1)(a)(b) of the E.S.I. Act. The learned trial Judge, vide Exhibit 7, explained the particulars of the offence to the respondents/accused. In the particulars of the offence it was stated that the accused no. 1 had failed to pay the contribution for the wage period from June 1996 to March 1997. The accused pleaded not guilty and claimed to be tried.

3. The complainant in support of his case examined P.W.1 Prakash Mazumdar. P.W.1 Prakash states that the complaint had been filed by the then Manager of Employees State Insurance Corporation and he identified the signature of the complainant on the said complaint. P.W.1 Prakash further deposed that the accused had not paid the contribution for the wage period from June 1996 to March 1997. In support of that the document at Exhibit P.W.1/B was produced. The said document shows that the accused had not paid the contribution for the wage period June 1996 to December 1996 and had paid on 22nd September 1998 the contribution of the wage period

from January to March 1997. The complainant also produced on record Exhibit P.W.1/A, being the sanction issued by the Regional Director of Employees State Insurance Corporation.

4. In the Statement under Section 313 of the Code of Criminal Procedure, the accused had taken a categorical stand that he was not covered under the Employees State Insurance Act as he had only three employees. The contractor had paid the contribution to the Employees State Insurance Corporation in respect of his employees. In support of his plea, the accused examined D.W.1 Yeshwant Lawande, who, at the relevant time, was working as a Production Manager. D.W.1 Yeshwant has stated that the accused had employed only three employees while the other employees were employed by the Contractor and the Contractor had deposit the contribution in respect of his employees. In the cross-examination this witness was shown a document styled as 'Inspection Report'. This witness has identified the signature of V.G. Prabhu, who, at the relevant time, was the Commercial Manager. The document, namely, the Inspection Report, which is filed in the Court, is a xerox copy. Be that as it may, the said document came to be exhibited as D.W.1/D.1.

5. The learned trial Court on consideration of

the evidence convicted the accused and sentenced the accused no. 2 to undergo simple imprisonment till the rising of the Court and accused 1 and 2 to pay fine of Rs. 5,000/- each in default to undergo simple imprisonment for one month. The accused, being aggrieved by the aforesaid Judgment of the learned trial Court, filed Criminal Appeal before the Sessions Court, Margao. As pointed earlier the learned appellate Court allowed the appeal and acquitted the accused.

6. Two principal points seem to have weighed with the appellate Court while allowing the appeal. In the first point the appellate Court considered that the employees were not the employees of the respondents/accused and, hence, the respondents/accused were not liable to pay the contribution. The second point was that the Inspection Report had not been proved at all.

7. Mr. Pangam, the learned counsel appearing on behalf of the appellant, who has ably argued the appeal, has submitted that the Inspection Report stands proved in view of the admission given by D.W.1 Yeshwant. According to him, therefore, once the Inspection Report is proved and the complainant has been able to establish that there were more than 10 employees working in the factory, the accused are liable to pay for the

contribution of the employees of the Contractor.

8. The substratum of the prosecution case is the Inspection Report, which is at Exhibit D.W.1/D.1. The complainant in order to establish that on the relevant day there were more than 10 employees ought to have examined the Inspector, who inspected the factory. This document was also not exhibited and proved by the complainant in the evidence of P.W.1 Prakash. In fact P.W.1 Prakash has admitted by stating "I do not know how many employees are working in the factory of the accused" and "Only on the basis of Form C-6 I say that the accused failed to pay the contribution." Even the so called admissions in the cross-examination of D.W.1 Yeshwant do not assist the complainant further in proving the Inspection Report. All that the complainant has proved from D.W.1 Yeshwant is the signature of V.G. Prabhu, who was the Commercial Manager then employed in the factory of the accused. The contents of the Inspection Report at D.W.1/D.1 have not been proved at all. It was incumbent upon the complainant to have established that on the day of the inspection the accused had employed 10 or more persons. Nothing prevented the complainant from examining the Inspector, who had inspected the factory premises. No explanation is forthcoming as to why the Inspector was not examined. Therefore, according to me, the learned lower appellate

Court was correct in holding that the complainant had not proved the Inspection Report. In any event as is rightly contented by the learned counsel on behalf of the respondents, the complainant has failed to prove the offence 'beyond reasonable doubt'.

9. In any event this is an appeal against acquittal and the view taken by the lower appellate Court is a possible view taken on the basis of the evidence on record, warranting no interference by this Court. Accordingly, the Criminal Appeal, which is sans merit, is dismissed with no order as to costs.

(P.V. HARDAS)
JUDGE.

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